

**Solitude Improvement District
Big Cottonwood Canyon
P.O. Box 71350
Salt Lake City, Utah 84171-0350
435/645-7153**

RECEIVED

June 9, 1998

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**WATER RIGHTS
SALT LAKE**

State of Utah
Department of Natural Resources
Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300

Attention: Mr. Lee Sim

Re: Commissioner - Big Cottonwood Creek

Dear Mr. Sim:

Pursuant to your request for additional written information at the May 28, 1998 meeting concerning the appointment of a Commissioner for Big Cottonwood Creek, we submit the following information, suggestions and concerns.

First, we object to the structure of the committee as presented at the meeting where there would be a representative each from the Big Ditch, Tanner Ditch, Brown & Sanford Ditch, Green Ditch, Lower Canal, Upper Canal, one from Salt Lake City, one from Big Cottonwood Canyon at large, and one from, collectively, the "smaller irrigation" ditch companies. This structure fails to address the concerns of the Morse Decree of 1914 (Decree No. 8921), twenty-third article, wherein it states "And it is further ordered, adjudged and decreed that for the purpose of carrying into effect this decree, according to its true intent and purpose, a commissioner of this court be appointed to supervise and regulate the proper measurement, diversion and distribution of the waters herein awarded to the said several parties to this decree according to the terms and requirements thereof, and to direct, supervise and inspect all means and appliances for the diversion, conveyance and use of the waters of said Big Cottonwood Creek, and report to the court from time to time, any violation of the provisions of this decree; . . .".

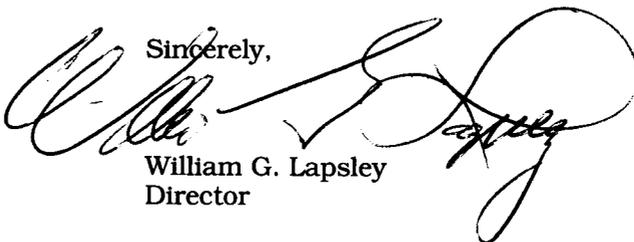
While we understand the State Engineer's statutory requirement of UCA 73-5-1 to consult with the water users prior to the appointment of a commissioner, it is not proper to weight the proposed committee with only those users of water at or below the mouth of Big Cottonwood Canyon. A careful reading of the Morse Decree would reveal that the water rights granted above the mouth of the canyon are satisfied first, or a dominant estate interest and the rights of the ditch companies and others below the mouth of the canyon are serviant interests. Those rights above the mouth of the canyon are superior and must be protected as much as those of the ditch companies and other water rights granted westwardly.

Without debating the merits of our concerns, we would suggest the following organization could address the interests of all parties who have an interest in the Morse Decree's proper administration. The nineteen (19) ditch companies named in the Decree would elect or appoint three (3) members of the committee. Salt Lake City would also have one (1) representative. This would give the users of Big Cottonwood Creek from the mouth of the canyon westward, four (4) representatives on the committee. Four (4) representatives would come from above the mouth of the canyon, one from the Silver Lake Company, one from Silver Fork Pipeline Corporation, one person at-large, and one from the Solitude Improvement District. The Solitude Improvement District was created by the Salt Lake County Commission as a special district for the purpose of sewer, water and flood control in 1982 and may be impacted by the actions or decisions of the commissioner. With yourself serving as chairman of the committee, you would have a committee of nine (9), with you holding the tie-breaking vote should it be required. Nine is a good number for a working group of this nature.

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Both the twenty-third and twenty-fourth articles of the Decree define the duties of the commissioner and how costs are to be allocated. It would appear the committee could work out the technical administration of the intent of the Decree.

If you have any questions concerning any of these matters, please do not hesitate to contact me.

Sincerely,

William G. Lapsley
Director

WGL:ms